

REMARKS

In the August 23, 2007 Office Action, the Examiner:

- Objected to claim 45 for reciting "said communication signal" without proper antecedent basis;
- Objected to the specification for containing new matter;
- Rejected claims 45-66 and 89-90 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement; and
- Rejected claims 45-64, 66, and 89-90 under 35 U.S.C. §103(a) as unpatentable over Falchuk *et al.* (U.S. Patent 6,256,613) in view of Wharton *et al.* (U.S. Pat. No. 5,831,664) and in further view of "official notice taken" by the Examiner of various knowledge and motivations; and
- Rejected claim 65 under 35 U.S.C. §103(a) as unpatentable over Falchuk *et al.* (U.S. Patent 6,256,613) in view of Wharton *et al.* (U.S. Pat. No. 5,831,664), Edelson *et al.* (U.S. Patent 5,737,539) and in further view of "official notice" taken by the Examiner.

Claims 45-50, 53-55, 58, and 89-90 have been amended and new claim 91 has been added. Support for these amendments may be found, for example in Figures 1 and 4, and on pages 14-21, and 23 of the originally filed specification. The amendments to the claims were not made in response to any cited art presented by the Examiner. Also, with respect to all amendments and cancelled claims, Applicants do not acquiesce to any characterizations of the invention nor any rejections or objections made by the Examiner. Applicant has not amended the specification or introduced any new matter into the application with respect to the claims as discussed more fully below.

The Applicant hereby requests evidence supporting the facts officially noticed by the Examiner as provided for by 37 C.F.R. 1.104(c)(2) and (d)(2). In addition, the Examiner's attention is drawn to MPEP §2144.03 which sets forth the procedure for taking official notice.

The present Office Action incorrectly states that Applicants' arguments are moot in view of new ground(s) of rejection. MPEP § 707.07(f) requires that "[t]he examiner must ... address any arguments presented by the applicant which are still relevant to any

references being applied." Thus, the Applicants arguments relating to Falchuk's failure to disclose performing the claimed identifying, generating, receiving and automatically transmitting at a server must be addressed by the Examiner to the extent the Examiner continues to apply Falchuk to these aspects of the claims.

Claim Objections

The Applicant thanks the Examiner for pointing out the inconsistency in claim 45. Claim 45 has been amended to recite "said synchronization signal" instead of "said communication signal" in proper reliance on the antecedent basis for a "synchronization signal." Applicant respectfully requests withdrawal of Examiner's objection to claim 45.

Claim Rejections - 35 U.S.C. § 112, first paragraph.

The Examiner rejected claims 45-66 and 89-90 under 35 U.S.C. §112, first paragraph for failing to meet the written description requirement and objected to the specification for containing new matter. In particular, the Examiner pointed to the language of claim 45 reciting "identifying at least two physicians from a database of multiple physicians" as new matter failing to comply with the written description requirement.

The Examiner has the initial burden, after a thorough reading and evaluation of the entire application, of presenting evidence or reasons why a person skilled in the art would not recognize that the written description provides support for the claims. *See*, MPEP §2163 II.A. and §2163.04. Applicant respectfully submits that the Examiner has not done so and that the specification as originally filed provides support for the claim language.

Nevertheless, Applicant has amended claim 45 to remove the offending language. Claim 45 now recites "identifying a group of physicians from multiple physicians." Claims 46-50, 53-55, 58, and 89-90 have been amended to properly depend from amended claim 45 and to correct typographical errors.

There is no requirement that support for newly added claim limitations be in the exact words of the specification. *See*, MPEP §2163 I.B. Claim limitations may be supported by express, implicit, or inherent disclosure in the specification as filed. To meet the written description requirement of 35 U.S.C. §112, first paragraph, the specification must convey, with reasonable clarity to those skilled in the art, that the applicant was in possession of the

invention as claimed on the filing date of the application. *See*, MPEP §2163 I.B citing *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991).

With respect to the language of claim 45, the present application, when originally filed, taught, *inter alia*, the following:

**Messages can be specifically targeted to ... a group of physicians.
Physicians may be identified by their practice areas, number of
prescriptions written or even their Drug Enforcement Agency Number
(DEA#), or Medical Education Number (ME#). Page 21, lines 20-22.**

In other words, the claimed interactive message is directed to a group of physicians.

The specification as a whole would lead one skilled in the art would recognize that the Applicant was in possession of the invention, as claimed, on the filing date of the application. As such, withdrawal of the Examiner's objection to the specification and rejection of the claims for failing to meet the written description requirement is respectfully requested.

Claim Rejections - 35 U.S.C. § 103

The Examiner rejected claims 45-64, 66, and 89-90 under 35 U.S.C. §103(a) as unpatentable over Falchuk in view of Wharton and "official notice." The Examiner has also rejected claim 65 under 35 U.S.C. §103(a) as unpatentable over Falchuk in view of Wharton, Edelson, and the Examiner's "official notice."

The Examiner bears the initial burden of factually supporting any *prima facie* assertion of obviousness by showing that the references cited expressly or impliedly suggest the claimed invention, or presenting a convincing line of reasoning as to why a person skilled in the art would have found the claimed invention obvious in light of the teachings of the prior art. *See*, MPEP §706.02(k), citing *Ex parte Clapp*, 227 USPQ 972, 973 (BPAI 1985). The Examiner must clearly and explicitly articulate the reasons why the claimed invention would have been obvious at the time the invention was made given the differences between the prior art and the claimed invention as a whole. *See*, MPEP §2141.02 and §2142, citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007). It is the invention as a whole, and not some part of it, that must be shown to be obvious under 35 U.S.C. §103(a). *See*, MPEP §2141.02, citing *In re Antonie*, 559 F2d 618, 620 (CCPA 1977).

To establish *prima facie* obviousness of a claimed invention:

1) All the claim limitations must be taught or suggested by the prior art. *See*, MPEP §2143.03 citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

2) There must be a reasonable expectation of successfully making the combination or modification of the prior art suggested by the Examiner without improper reliance on hindsight. *See*, MPEP §2143.03, citing *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976).

3) The prior art must enable a person of ordinary skill to make and use the invention. *In re Kumar*, 418 F.3d 1361, 1368 (Fed. Cir. 2005).

1. Falchuk fails to disclose many of the limitations of independent claim 45

Falchuk discloses a medical consultation management system in which a primary care physician requests a consultation with a specialist physician via a supervisory host computer. The specialist then responds to the primary care physician's request via the supervisory host computer. *See* Abstract. Falchuk does not disclose of the method steps of independent claim 45.

The Examiner acknowledges that Falchuk does not disclose "at a server in said computer system: identifying at least two users from a database of users." The Applicant submits that, in the same way, Falchuk fails to disclose "at a server in said computer system: identifying a group of physicians from multiple physicians." (As amended, emphasis added.) The Examiner states that Falchuk discloses "[i]dentifying a physician (Falchuk; col. 2, lines 11-21)." This portion of Falchuk discloses a means for accepting a request from a primary care physician, but provides no teaching regarding identifying a group of physicians (which is to be the recipient of a customized, interactive message) at a server from multiple physicians. Falchuk also does not disclose "a group of physicians" to which to send a customized message.

Neither does Falchuk disclose:

at a server ... generating an interactive message comprising: customizing at least a portion of said medical information stored on the computer system to said identified group; and including objects that physicians in the group can select to respond to, or dispose of, the interactive message. (As amended, emphasis added)

The Examiner cites Falchuk column 5, lines 35-47 and column 6, lines 11-17 for “generating an interactive message comprising: customizing at least a portion of said medical information stored on the computer system to said identified physicians.” The cited portion of column 5 discusses the situation in which the primary care physician responds to the specialist’s initial comments with a message requesting clarification or concluding the consultation. This portion specifically teaches that the message is transmitted from the remote client 20 to the supervisory host computer and, if needed, transmitted to the specialist for further consultation. The cited portion of column 6 discloses sending the primary care physician pending responses from the supervisory host computer. No teaching is made that the message from the primary care physician or the pending responses:

- 1) are generated at a server;
- 2) are generated by customizing medical information stored on the computer system to the identified physicians;
- 3) are interactive; or
- 4) comprise objects that the physician can select to respond to, or dispose of, the interactive message.

Indeed, “objects” as claimed are not disclosed anywhere in Falchuk.

Thus, no portion of the above limitation is disclosed by Falchuk.

As the Examiner correctly notes, Falchuk does not disclose “receiving, at the server, a synchronization signal from a respective handheld computing device operated by a respective member of the group of physicians; and in response to said synchronization signal, automatically transmitting said interactive message from the computer system to said respective handheld computing device.

Thus, Falchuk fails to disclose any of the method steps of independent claim 45.

2. Wharton fails to cure the deficiencies of Falchuk

Wharton discloses a “system for synchronizing the display of data” between “an interactive terminal and at least one mobile device having a display.” *See*, Wharton, Abstract. In particular, Wharton discloses a remote control interface with “a reconfigurable display to correspond with data displayed on the interactive terminal.” *See*, Wharton, column 1, lines 54 – 67. Wharton is directed to synchronizing displays, not sending customized, interactive messages and certainly not “distributing medical information stored on a computer system to physicians” as claimed.

Wharton also fails to disclose any of the method steps of independent claim 45. In addition, any combination of Wharton with Falchuk is an unpredictable variation of the art and is improper because one skilled in the art would have no reasonable expectation of success, as described more fully below.

As the Examiner correctly notes, Falchuk does not disclose “at a server in said computer system: identifying at least two physicians from a database of multiple physicians.” The Examiner states that “Wharton discloses at a server identifying at least two users from a database of multiple users (Wharton; abstract, col. 2, lines 11-35).” This portion of Wharton discusses a CPU with a database. Upon review, Wharton makes it clear that the database stores data for display on the interactive terminal and the “at least one mobile interface device.” *See, e.g.* claim 1. Wharton makes no disclosure regarding identifying a group of users, much less a group of physicians from multiple physicians. Independent claim 45 has been amended to recite “at a server in said computer system: identifying a group of physicians from multiple physicians.”

The disclosure of a server with a database, either alone, or in combination with the disclosure of “means for accepting a request from a physician” in Falchuk does not suggest the claim limitation of “at a server in said computer system: identifying a group of physicians from multiple physicians.” (Emphasis added.) As discussed above, a “means for accepting a request from a physician” does not correspond to “identifying a group of physicians from multiple physicians.” Wharton’s teaching regarding a server with a database storing display data also does not correspond to, and cannot be combined with Falchuk’s teaching regarding accepting a request from a primary care physician to disclose “identifying a group of physicians from multiple physicians.”

The Examiner asserts that it would have been obvious to “include the aforementioned limitation as disclosed by Wharton” in the system of Falchuk because it would allow “multiple mobile interface devices to interact with an interactive terminal.” The system of Falchuk is a medical consultation management system in which a primary care physician requests a consultation with a specialist physician via a supervisory host computer. Since Falchuk does not disclose multiple mobile interface devices or an interactive terminal as defined in Wharton, Applicant fails to see how or why the disparate teachings of Falchuk and Wharton would have been combined to render the claimed invention obvious to one skilled in

the art. Applicant respectfully requests that the Examiner explicitly articulate the reasons why the claimed invention would have been obvious at the time the invention was made given the differences between the Wharton, Falchuck, and the claimed invention as a whole.

As discussed in the Response to Office Action dated 13 November, 2006, the prior art teaches that "providing an attractive computer-based system to physicians is fraught with unexpected difficulties." *See*, Edelson, column 2, lines 51-53. Combining Wharton's system with "multiple mobile interface devices" and "an interactive terminal" is an unpredictable variation that one skilled in the art would not expect to succeed.

Wharton is not cited for, nor does it disclose

at a server ... generating an interactive message comprising: customizing at least a portion of said medical information stored on the computer system to said identified group; and including objects that physicians in the group can select to respond to, or dispose of, the interactive message. (As amended, emphasis added)

In fact, Wharton does not disclose interactive messages at all, let alone interactive messages that have been customized to a group of physicians and include "objects that the physicians can select to respond to, or dispose of, the interactive message."

As the Examiner correctly notes, Falchuk does not disclose "receiving, at a server, a synchronization signal from a respective handheld computing device operated by a respective one of said identified physicians." Independent claim 45 has been amended to recite "receiving, at the server, a synchronization signal **from a respective handheld computing device operated by a respective member of the group of physicians.**" The Examiner states that "Wharton discloses receiving, at a server, a synchronization signal from a respective handheld computing device (Wharton; abstract, col. 2, lines 11-35.)"

The Examiner does not address the claim language that states the synchronization signal is "from a respective handheld computing device operated by a respective member of the group of physicians." The Examiner is respectfully reminded that "all words in a claim must be considered in judging the patentability of that claim against the prior art." *See*, MPEP § 2143.03 citing *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). In addition, MPEP §2116 provides that the materials on which a process is carried out must be accorded weight in determining the patentability of a process. Thus, the claim language "operated by a respective one of said identified physicians" must be considered.

Wharton does not disclose “receiving, at the server, a synchronization signal from a respective handheld computing device operated by a respective member of the group of physicians.”

As the Examiner correctly notes, Falchuk does not disclose “in response to said synchronization signal, automatically transmitting said interactive message from the computer system to said respective handheld computing device.” The Examiner states that “Wharton discloses in response to said communication (or synchronization) signal, automatically transmitting said interactive message from the computer system to said respective handheld computing device (Wharton; abstract, col. 2, lines 11-35.)” This portion of Wharton discusses transmitting user input from a mobile interface device to a set-top transceiver device for synchronization and transmitting a synchronization signal to a mobile interface device and the interactive terminal in order to control the displays of both devices. The synchronization signal appears to be transmitted in response to user input. There is no mention of transmitting anything in response to the synchronization signal. Nor is there mention of transmitting a message of any type, much less the interactive message claimed. Because Wharton does not disclose an interactive message as claimed, Wharton cannot, and does not, disclose automatically transmitting the interactive message at all.

Thus, Wharton also fails to disclose any of the method steps of independent claim 45. In addition, any combination of Wharton with Falchuk is an unpredictable variation of the art and is improper because one skilled in the art would have no reasonable expectation of success.

3. The Examiner’s “official notice” fails to cure the deficiencies of Falchuk and Wharton

As discussed more fully above, neither Falchuk nor Wharton disclose:

at a server ... generating an interactive message comprising: customizing at least a portion of said medical information stored on the computer system to said identified group; and including objects that physicians in the group can select to respond to, or dispose of, the interactive message. (As amended, emphasis added)

Instead of citing a prior art reference for this limitation, “the Examiner takes official notice that it was well known in the electronic messaging/computing arts to select [*sic*] to respond or dispose/delete an incoming message” and states that “[t]he motivation would have been to obtain the information that is needed by the physician, and therefore not wasting time with

the messages/educational information that the physician is [sic] not needed.” The Applicant hereby requests evidence supporting the facts officially noticed by the Examiner, as provided for by 37 C.F.R. 1.104(c)(2) and (d)(2).

Contrary to the Examiner’s position, “to select [sic] to respond or dispose/delete an incoming message” is not analogous to generating, at a server, an interactive message including objects in the interactive message so that the physicians can select an object to respond to, or dispose of, the interactive message. Instead, known electronic messages required a user to type a response and click send or access a delete function in the electronic messaging application on the client device. It was not well known to include “objects” in an interactive message generated at a server that physicians can select to respond to, or dispose of, the interactive message, as claimed. Examples of these messages are shown in Figures 3 and 4 of the specification as originally filed.

Accordingly, claim 45, and all claims dependent thereon, cannot be unpatentable over Falchuk in view of Wharton and the Examiner’s official notice, because the prior art does not teach or suggest all of the claim limitations. In addition, the Examiner’s proposed combination of the prior art is an unpredictable variation of the art and is improper because one skilled in the art would have no reasonable expectation of success. For all of these reasons, claim 45 and all claims dependent thereon are allowable.

4. Edelson fails to cure the deficiencies of Falchuk, Wharton, and the Examiner’s “official notice”

In rejecting claim 65, the Examiner cites Edelson in combination with Falchuk, Wharton and the Examiner’s “official notice.” Dependent claim 65 includes all of the limitations of claims 45, 63, and 64. Thus, Edelson must cure all of the deficiencies discussed above.

As discussed more fully in the Amendment (A) submitted on November 13, 2006, Edelson does not disclose any of the limitations of claim 45 missing from Falchuk, there is no motivation to combine Edelson with Falchuk, there is no evidence that one skilled in the art would combine the references, Edelson teaches away from a combination with Falchuck and

would lead one skilled in the art to believe there was no reasonable expectation of success in making such a combination, and the references solve different problems.

Accordingly, claim 65 cannot be unpatentable over Falchuk in view of Wharton, Edelson, and the Examiner's official notice, because the prior art does not teach or suggest all of the claim limitations and the Examiner's proposed combination of the prior art is an unpredictable variation of the art and is improper because one skilled in the art would have no reasonable expectation of success. For all of these reasons, claim 65 is allowable..

5. Falchuk, Wharton, Edelson, and the Examiner's "official notice" fail to disclose additional limitations of the dependent claims

a. The cited art fails to disclose the additional limitations of Claim 51

Dependent claim 51 recites, *inter alia*, that "the interactive message includes an inquiry whether said physicians wish to receive Continuing Medical Education (CME) at the handheld computing device." (Emphasis added.) As previously submitted in Response to Office Action dated 13 November, 2006, Falchuk does not disclose an inquiry whether said physician wishes to receive CME. Furthermore, neither Wharton, Edelson, or the Examiner's "official notice" disclose anything about CME and certainly do not disclose that an interactive message includes an inquiry whether physicians wish to receive CME, as required by claim 51.

In the Office Action mailed February 7, 2007 the Examiner stated that:

in col. 5, lines 48-48, Falchuk teaches that the physician is entitled to CME credits based on his/her participation and Falchuk continues in col. 6, lines 11-27 that the primary care physician may request the display of his/her participation in prior consultations to obtain information on earned CME credits. Examiner considers that the physician wishes to receive CME. Also, in col. 5, lines 35-47 Falchuk teaches with an incoming message the physician may request a clarification or may conclude the consultation, and a CME accreditation module indicated generally at 70 is notified [sic] that the consultation has been successfully concluded. Examiner considers that when the physician concludes the consultation, that means he/she no longer wishes to receive CME. (Emphasis added.)

The only request disclosed is a request by the physician for a display of the physician's prior participation in consultations. Falchuk does not teach including an inquiry in an

interactive message generated at a server asking whether the primary care physician wishes to receive CME. The Examiner interprets certain portions of Falchuk as implying that the physician either does or does not wish to receive CME, but the wishes of the physician are not what is claimed. The Examiner provides no explanation of where in Falchuk an inquiry into the physician's wishes might be disclosed. Falchuk appears to teach only that Continuing Medical Education credits are automatically provided with consultations.

Accordingly, claim 51 cannot be unpatentable over Falchuk in view of Wharton and the Examiner's official notice, because the prior art does not teach or suggest all of the claim limitations.

b. The cited art fails to disclose the additional limitations of Claim 59

Dependent claim 59 recites, *inter alia*, that "receiving, from said respective handheld computing device, an amount of interactive messages stored on said respective handheld computing device; and if said amount is above a maximum amount, storing said interactive message on the server instead of transmitting said interactive message to said respective handheld computing device." Instead of citing a prior art reference for this limitation, "the Examiner takes official notice that it was well known in the electronic messaging/computing arts to store interactive messages in the handheld computing device and if the amount of messages is above a maximum amount, store interactive messages on the server. The motivation would have been to maintain the storage capacity for the handheld computing device and not lose any messages." The Applicant hereby requests evidence supporting the facts officially noticed by the Examiner as provided for by 37 C.F.R. 1.104(c)(2) and (d)(2).

Contrary to the Examiner's position, the claimed "receiving, from said respective handheld computing device, an amount of interactive messages stored on said respective handheld computing device; and if said amount is above a maximum amount, storing said interactive message on the server instead of transmitting said interactive message to said respective handheld computing device" is not the same as storing "interactive messages in the handheld computing device and if the amount of messages is above a maximum amount," Storing the interactive messages at the server was not well known in the art at the time of the present invention. The claim recites "receiving, from said respective handheld computing

device, an amount of interactive messages stored on said respective handheld computing device.” This feature was not well known in the art at the time of the present invention. Instead, server-handheld communications involved downloading messages (including large individual messages and/or numerous messages) from the server to the handheld and deleting them at the server.

Accordingly, claim 59 cannot be unpatentable over Falchuk in view of Wharton and the Examiner’s official notice, because the prior art does not teach or suggest all of the claim limitations.

c. The cited art fails to disclose the additional limitations of Claim 61

Dependent claim 61 recites, *inter alia*, that the “handheld computing device is configured to store a set maximum amount of messages at any one time.” Instead of citing a prior art reference for this limitation, “the Examiner takes official notice that it was well known in the electronic messaging/computing arts to storing [sic] a set maximum amount of message [sic] at any one time... The motivation would have been to maintain the storage capacity for the handheld computing device and not loose any messages.” The Applicant hereby requests evidence supporting the facts officially noticed by the Examiner as provided for by 37 C.F.R. 1.104(c)(2) and (d)(2).

Contrary to the Examiner’s assertion, configuring a handheld computing device “to store a set maximum amount of messages at any one time” was not well known in the art at the time of the invention. Instead, a maximum amount of messages was not set. Accordingly, claim 61 cannot be unpatentable over Falchuk in view of Wharton and the Examiner’s official notice, because the prior art does not teach or suggest all of the claim limitations.

d. The cited art fails to disclose the additional limitations of Claim 62

Dependent claim 62 recites, *inter alia*, “prioritizing the interactive message by a category selected from the group consisting of: an expiration date, importance, and urgency.” Instead of citing a prior art reference for this limitation, “the Examiner takes official notice that it was well known in the electronic messaging/computing arts to ... prioritizing the interactive message by a category selected from the group consisting of: an expiration date,

importance, and urgency. The motivation would have been to maintain the storage capacity for the handheld computing device and not lose any messages." The Applicant hereby requests evidence supporting the facts officially noticed by the Examiner as provided for by 37 C.F.R. 1.104(c)(2) and (d)(2).

Contrary to the Examiner's assertion, prioritizing the interactive message by an expiration date, importance, or urgency was not well known in the art at the time the present invention was made. Instead, messages were not prioritized. Accordingly, claim 62 cannot be unpatentable over Falchuk in view of Wharton and the Examiner's official notice, because the prior art does not teach or suggest all of the claim limitations.

e. The cited art fails to disclose the additional limitations of Claim 89

Dependent claim 89 includes all of the limitations of claims 45 and 48 and further recites that "examining the profile includes examining, for each of the identified physicians, count data, said count data recording access time and frequency, and input data, said input data tracking all input for each of the identified physicians." The Examiner cites Falchuk, column 5, line 48 to column 6, line 10 for this limitation. This portion of Falchuk discloses recording "information concerning the consultation session" and producing accreditation reports as well as certain functions performed by the remote client computer. It does not disclose examining respective profiles of said identified physicians including examining count data and input data for each of the identified physicians as claimed. Falchuk does not disclose physician profiles, count data, or input data as claimed.

Accordingly, claim 89 cannot be unpatentable over Falchuk in view of Wharton and the Examiner's official notice, because the prior art does not teach or suggest all of the claim limitations.

f. The cited art fails to disclose the additional limitations of Claim 90

Dependent claim 90 recites, *inter alia*, that "the objects include answers the identified physicians can select without typing text." The Examiner states "Wharton discloses objects [sic] include answers the physicians can select without typing text (Wharton; col. 3, lines 55-63)." The cited portion of Wharton discloses various methods by which "a user interacts with the mobile interface device." As discussed above, Wharton does not disclose interactive messages. Thus Wharton does not, and cannot, disclose interactive messages that include

objects that "include answers the identified physicians can select without typing text" as claimed.

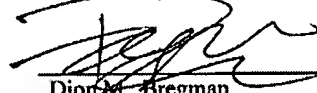
Accordingly, claim 90 cannot be unpatentable over Falchuk in view of Wharton and the Examiner's official notice, because the prior art does not teach or suggest all of the claim limitations.

CONCLUSION

For all of these reasons the pending claims should be allowed. In view of the foregoing, it is respectfully submitted that the application is now in a condition for allowance. However, should the Examiner believe that the claims are not in condition for allowance, the Applicant encourages the Examiner to call the undersigned attorney at 650-843-7519 to set up an interview.

Respectfully submitted,

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